

JAN 13 2006

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

**CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS**

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

VINCENT MARTINEZ,

Defendant - Appellant.

No. 03-30502

D.C. No. CR-97-00037-JDS-10

MEMORANDUM*

Appeal from the United States District Court
for the District of Montana
Jack D. Shanstrom, District Judge, Presiding

Submitted January 9, 2006**

Before: HUG, O'SCANNLAIN and SILVERMAN, Circuit Judges.

Vincent Martinez appeals from the 353-month term of imprisonment imposed upon resentencing following his jury trial conviction for conspiracy to possess with intent to distribute methamphetamine, in violation of 21 U.S.C.

* This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by Ninth Circuit Rule 36-3.

** This panel unanimously finds this case suitable for decision without oral argument. See Fed. R. App. P. 34(a)(2).

§§ 841(a)(1) and 846, and use of a firearm during a drug trafficking crime, in violation of 18 U.S.C. § 924(c). We have jurisdiction pursuant to 28 U.S.C. § 1291.

Martinez challenges the district court's enhancement based on drug quantity. Because this challenge was preserved below, we vacate the sentence and remand for resentencing under the now-advisory Guidelines. *See United States v. Booker*, 543 U.S. 220 (2005); *United States v. Kortgaard*, 425 F.3d 602, 610-11 (9th Cir. 2005).

Martinez's motion for leave to file supplemental briefing is denied as moot.

SENTENCE VACATED and REMANDED.